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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,685	01/24/2001	Wilhelm A. Keller	068754/0274	4423

7590 02/05/2002

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EXAMINER

BOMBERG, KENNETH

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 02/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/767,685

Applicant(s)

KELLER ET AL.

Examiner

K neth Bomberg

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2001.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) 2, 11 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8-10, 12-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 19 November 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/563,109.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3-6, 8-10, 12-14, and 16-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of KELLER et al. U.S. Patent No. 6,186,363 in view of KELLER (5,137,182). KELLER et al. '363 claims substantially the same device of Applicant's current claims except for the inclusion of a closure cap.

KELLER '182 teaches the use of a closure cap in order to seal the device when not being used. It would have been obvious to one having ordinary skill in the art to have modified KELLER et al. '363 to have included the sealing cap of KELLER '182 in order to seal the device when not being used as taught by KELLER '182.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-6, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by KELLER (5,137,182).

In Fig. 7, column 3, lines 11-16, and column 4, lines 57-68, KELLER teaches of cartridge (10) for a mixer having a bayonet coupling (7) and a closure member (20b). KELLER explicitly teaches “the cylinders 2, the dispensing canals 4, and the cross-sections of the matching stoppers 14 may be identical or different”. Clearly if the cross-sections of the dispensing canals (4), and the cross-sections of the matching stoppers (14) of the cartridge are different as explicitly taught, the coding elements for coded introduction being dissimilarly sized, shaped, and visually different inherently follow.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 8-10, 12-14, and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over KELLER (5,137,182).

KELLER '182 teaches of a device substantially according to the claims but does not explicitly teach of the associated mixer for mating with the cartridge. The examiner takes notice that dual cartridge containers as disclosed by KELLER '182 are customarily associated with related mixers as claimed in order to mix and dispense the material therein. Clearly such a mixer would be configured to mate with the bayonet and outlets of the cartridge. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included an associated mixer with the cartridge of KELLER in order to mix and dispense the material therein as is customary in the art.

#### ***Response to Arguments***

7. Applicant's arguments filed 19 November 2001 have been fully considered but they are not persuasive.

Applicant's supplemental terminal disclaimer discussed in the remarks has not been received. The terminal disclaimer will be required to make any future response completely responsive.

Applicant's argue that Keller '182 fails to provide an explicit teaching of alignment for the purpose of coding as disclosed in the present application. This argument is not persuasive because the claims recite structure that reads on the Keller '182 reference. Specifically, the claims call for "coding elements", "complementary coding elements", and "each said outlet of said chamber being of a different configuration from each other". The coding is subsequently

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claimed as being dissimilarly sized outlets, dissimilarly shaped outlets, or visual alignment means. Keller '182 discloses different cross section outlets. Outlets with different cross sections inherently are dissimilarly sized outlets, dissimilarly shaped outlets, and form visual alignment means. It is correct that the different cross section outlets are provided for an explicit reason of proportioning the two components, however, the outlets as disclosed meet the claim limitations as to structure. Inherently the intended use of coding would follow as two different cross section outlets could only be aligned in one direction. Applicants claim is directed to a structure that is capable of performing a function, given that the Keller '182 reference teaches the same structure that must inherently perform the same function, the argument of the lack of an explicit teaching with respect to the specific function is moot.

With respect to Applicant's traversal of the official notice, attention is directed to the art of record, which is replete with teachings of mixers attached to dual component cartridges by way of a bayonet coupling. One such example supporting the assertion is Simmen 5,413,253. Clearly a mixer attaching to the cartridge would have to mate with the cartridge and thus have inlets corresponding to the outlets.

Finally concerning the assertion of the present claims being more narrow than the allowed parent application, the claims of the parent application are narrower in some aspects and are therefore allowable over the prior art. Should applicants believe that the present claims are more narrow in all aspects, they are encouraged to file a reissue of the parent application to correct the alleged error in the parent application.

*Conclusion*

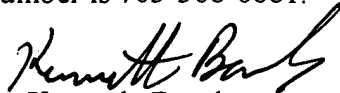
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is 703-308-2179. The examiner can normally be reached on Monday-Thursday from 8:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry C. Yuen can be reached on 703-308-1946. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7766 for regular communications and 703-308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

  
Kenneth Bomberg  
Primary Examiner  
Art Unit 3754

K.B.  
February 4, 2002

Attachment for PTO-948 (Rev. 03/01, or earlier)  
6/18/01

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a)

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.